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ENCLOSURES FROM BELOW? THE POLITICS OF SQUATTING AND ENCROACHMENT IN THE POST RESTORATION NEW FOREST

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Abstract

Notwithstanding recent interest in the politics of housing, squatting in the formative contexts of post-Restoration rural England remains little understood and studied. Drawing upon a diverse archive of central government papers and those of the local officers of the New Forest – the largest crown forest in England and Wales – the paper argues that the resort to squatting was both a function of the uneven contours of forest governance. Moreover, while squatting led to the formation of new communities, it was neither exclusively a plebeian act nor, against official discourses, necessarily an abuse of the assets of the forest.

Doubtless refugees, rebels, and men broken in the revolts and the civil wars found harbourage in the Forest, and being outlaws did and lived after their kind, till with the passing of time they were absorbed. In common with other Celtic lands the Forest has a way of absorbing to itself immigrants and newcomers, until, in the fullness of a surprisingly short time, they become more passionately Foresters than the indigenes.¹

Histories of housing have recently assumed an important place in the social historical canon. From studies of the evolution of social housing, through institutional provision in the form of poorhouses and workhouses, to the inadequacies of housing stock and slum clearance, the politics of provision and quality of housing have become important topics in writing new histories from below.² Against this upsurge in academic interest, one facet of housing histories that remains remarkably little studied is squatting. While historians of settlement in Australia and, more recently, urban social movements and activism in post-war urban Europe have analysed the practices and effects of squatting,³ in the context of rural Britain the subject has been subject to little systematic treatment. As Sara Birtles has stated, commons and wastes were ‘magnets for the poor and dispossessed’, their location ‘at the fringes of settlements’ meaning that squatting there was ‘less obtrusive’, the ‘diverse natural products’ that commons and wastes provided allowing squatters to eke out a ‘basic subsistence’.⁴ Yet apart from Noir’s unpublished PhD thesis on squatters’ settlements in nineteenth-century Herefordshire and the late Colin Ward’s excellent, populist but impressionistic *Cotters and Squatters*,⁵ the analysis of squatting and informal settlement has only assumed contextual prominence in social histories of rural Britain. Thus, squatting features as theme and context in studies of everyday life on wastes, margins and commons, most notably in Raphael Samuel’s famous study of Headington Quarry (Oxfordshire).⁶ Similarly, historians of enclosure have noted how it put an end to ways of informally getting by through living off the common in upland and lowland England and Wales.⁷ But in all such studies squatting exists on the intellectual fringe.

The situation is no better, and arguably worse, for the forests of England and Wales, those vast, largely unsettled biotic reserves that by the Restoration still covered large parts of the country and formed the largest part of the Crown estate.⁸ As Paul

Coones has asserted, while wood-taking and poaching have been subject to systematic analysis, squatting and encroachment have not; yet squatting and encroachment ‘lay at the heart of the distinctive legal, economic, demographic, social, and cultural character of the forests’.⁹ What we do know relates almost exclusively to the sixteenth and early seventeenth centuries. Pettit’s study of Northamptonshire has shown that previously sparsely populated forests settlements grew relatively quickly between 1524 and 1670, a response to population growth and the creation of sheep-runs pushing ‘infinite idle fry’ into the forests.¹⁰ The *Report of the Royal Commission* of 1639 regarding the proposed disafforestation of Hatfield Forest (Essex) made reference to the ‘Misdemeanours often committed and usually practised by the pretended Commoners’, an allusion to informal settlement.¹¹ Likewise, John Broad has noted that before disafforestation in 1632, Bernwood Forest (Buckinghamshire) ‘attracted settlers who sought to make a living from the common pasture and the clay available for brick and pottery making’ leading to significant population growth. On disafforestation, though, ‘squatting was no longer possible’.¹² Langton’s recent study of forest fences shows this to be a general theme for the period. About the fringes of Needwood Forest (Staffordshire) ‘the poorer sort of people’ had been ‘permitted to erect small tenements and cottages’, while before the disafforestation of 1625 half of Gillingham Forest (Dorset) had already been converted to arable and pasture through assarts (the conversion of forest to arable use) and purprestures (enclosure and encroachment of forest without license).¹³

We do well to remember though that the erection of informal, illicit dwellings could be the work of existing common rights holders seeking to accommodate a work force or, as in a case at Bernwood in the 1610s, to accommodate the elderly and relatives.¹⁴ We also know that in the late fifteenth and sixteenth centuries the Crown, as Joan Thirsk put it, ‘had shown itself alert to unlawful encroachments’, enquiries often leading to formalising such settlements as revenue raising ‘projects’. Further, from the

reign of Henry VIII to the start of the Civil War, public spokesmen actively encouraged assarting as a means of increasing the population.¹⁵ Given such public discourse, we can in part understand the surety of the claims and actions of Gerard Winstanley's Diggers, not only in their belief that, as Davis and Alsop have put it, 'the gentry should be free to enjoy their enclosures while the poor could cultivate the commons ... including parks, forests, chases and the like' but in actually encroaching and squatting on the same.¹⁶ Besides, as Winstanley saw it, the king being dead, Crown lands were 'returned againe to the Common people of England'.¹⁷ Whether there were Diggers settlements, or smaller scale squats inspired by Winstanley, in the forests however remains unknown.¹⁸

The exception regarding the modern period is Brian Short's excellent study of nineteenth-century Ashdown (Sussex) that relates the centrality of squatting to forest customs and the settlement pattern. The regulation of squatting in Ashdown was also a major source of conflict: threatening letters in 1810 promising 'Murder, fire and revenge' on anyone seeking to evict the 'Fifty Good Fellows' from their purprestures in the vicinity of Maresfield. It is important to note, though, that Ashdown was no longer a Crown forest but rather had been disafforested in 1693 with 6,400 of the 14,000 acres partitioned as common. Moreover, squatting was not the central focus of Short's study.¹⁹

This paper seeks to fill this lacuna through the systematic study of the resort to, and politics of, squatting and encroachment in the post-Restoration New Forest, the most extensive and most important of the forests of the Crown. It does so in the wider context that squatting was characterized as an abuse, a diminution of the value of the forest, a discourse that was particularly mobilized in the period in relation to Crown attempts to make forests fiscally useful through preserving and planting timber trees.²⁰ In so doing it draws upon the records of both sides of forest governance: the Lord Warden and his officers with a responsibility to protect the Monarch's deer, and the officers of the Exchequer (and related departments) charged with raising revenue from the forest. It

argues that against repeated attempts by forest officials and other agents of the state to conceive of squatters and (usually small-scale) encroachment as ‘evil’ and as ‘abuses’ respectively, such forms of dwelling were far from destructive. Before analysing the resort to, responses to, and effects of squatting in the New Forest, the paper begins by placing these contentions into context by analyzing the system of governance in the forest and the way in which tensions and contradictions therein created the ideal conditions for the consolidation of the smallholder economy of the forest.

Governing and dwelling the New Forest

During Cromwell’s protectorate while it was proposed that most onetime Royal forests should be sold off to fund arrears in army pay, the New Forest was to be saved.²¹

Instead, it was to be made useful in other ways. Permission was granted to build a coal mine in 1653 for which the nation received one eighth of the profits, and for a decoy pond.²² In some senses, this simply built upon a trend going back to the middle of the previous century with the creation in 1542 of the office of the Surveyor General of Woods appointed under the control of the Exchequer,²³ this assuming control of the central accounting department for the sale of wood established thirty years previously.²⁴ By positioning Crown forests as revenue generating resources, it questioned the once absolute control of forests through local authorities under the control of the Lord Warden as vested in forest law, the first significant shift in powers occurring in 1567 when the Justice in Eyre was stripped of his power to sell wood.²⁵

Before 1542 ultimate, arbitrary and unqualified power rested with the Monarch. In turn, for each forest, the Monarch appointed a Lord Warden, whose position it was to protect the ‘pleasure’ of the Monarch by looking after the deer and other ‘beasts’ of the chase and protecting the forest from abuses. The Monarch also appointed the Justice in

Eyre (the highest magistrate in forest law) who sat at the Court of Justice-seat, the supreme forest court, and was responsible for the practice of forest law. The lowest of the forest courts was the Attachment Court, also known as the 40 Day Court on the account of the frequency at which it was supposed to be held for each bailiwick (see below). It was the court at which all offences against forest law were initially presented. The next tier was the Swainmote, the court responsible for the judicial and administrative regulation of the forest at which the verderers (judicial officers of the forest appointed by Sheriffs and responsible for the overall care of the vert and the venison) acted as judges in cases presented by forest officers. The role then of the Justice-seat was in part symbolic, the spectacle impressing the power of Monarch and forest law, and in part codifying, all forest officers having to attend with their rolls of record from Attachment and Swainmote courts as well the offenders and those claiming liberties in the forest.

While Lord Wardens were also chief justices of the forest courts, day-to-day responsibility tended to be vested in Deputy Wardens and Chief Foresters. Under the Deputy Wardens were agisters (responsible for collecting fees for those grazing animals in the forest without common right to do so), regards (who presented offences against forest law at the forest courts) and rangers (responsible for returning deer that had strayed into the purview back within the forest pale). The Chief Forester – or Master Keeper – were responsible for a separate ‘bailiwick’ (nine in the New Forest) into which forests were divided, bailiwicks then divided into walks (fifteen), each of which was managed by an underkeeper (aka groomkeepers). Keepers were specifically responsible for the welfare of the deer, something achieved through the cutting of ‘browse’ for their consumption. Woodwards were also responsible for the maintenance and sale of Crown wood and timber.²⁶ There were other jurisdictions and territorial divisions too: parishes with all their ecclesiastical and social policy functions; extra parochial areas free from poor and church rates, tithes and the jurisdiction of parish constables; and purview, areas

disafforested by Edward I but to which common rights to the forest still pertained and restrictions to hunting remained. Moreover, large parts of some forests were private lands – 24,797 acres or some 27% of the New Forest – over which manorial courts also existed and at which presentments for encroachments against commons and wastes could be presented.²⁷ Further, some manors adjoining and without the New Forest also claimed rights and privileges therein.²⁸

The creation of the office of the Surveyor General of Woods under the auspices of the 1542 Act also ultimately led to the creation of other new forest officers under his command, specifically preservators, appointed to protect Crown wood and timber. Moreover, beyond assuming some powers hitherto vested in the officers of the Warden and the Eyre, the shift also meant that officers of the Exchequer and the Surveyor General sought adjudication by magistrate and the normal courts rather than the forest courts. Inevitably, competing and shifting jurisdictions and practices brought the two sides into constant conflict, the Warden's officers, as Richard Reeves notes of the New Forest, 'resist[ing] the Exchequer in their attempts to reform their often long established and often questionable practices'²⁹ While, as Manwood put it, there was a 'divisum imperium' in forest governance, what united both the Warden and the Surveyors' sides was the fact they sought to limit commoners to exercise only their rights of common and to prevent all others from exploiting the resources of the forest.³⁰ Besides, there were limits in the efficacy of some of those new powers that transcended established forest governance. For instance, in relation to squatting, forests were not exempt from the provisions of the 1589 Erection of Cottages Act, which required that all newly erected cottages must have at least four acres of freehold land attached to them.³¹

On the Restoration, while the pre-Civil War governance structures remained the same, the pace of making forests useful quickened and the tensions between the two branches of forest governance deepened. The Exchequer being particularly strident in

proceeding against forest officers under common law for taking timber as (self-)payment in kind, while forest law was often mobilized against keepers and their underlings for taking excessive wood under the excuse of using it for browse for deer.³² As James Scott has asserted, ‘when several agencies superintending the forest have conflicting utilitarian agendas, the result can be incoherence and room for the local population to maneuver’.³³ And through such cracks in the grid of forest governance those with, as Langton has put it, little to lose were understandably attracted to poach, steal wood and squat.³⁴

The post-Restoration situation in the New Forest was particularly parlous. It being the largest Crown forest at 37,907 hectares and situated close to the Naval dockyard at Portsmouth, it was vital for the Crown to restore order and to reassert its rights as a valuable state assets.³⁵ To this end, with no register of claims to common rights existing, in 1670 the Justice-seat for the [New] Forest enrolled all claims to rights in the forest. The *Abstract* detailed 307 separate assertions of rights – by manorial lords relating to their estates, the mostly small copyhold and customary tenants of the manor, and the freeholders of holdings usually between 20 and 50 acres – appertaining to 65,000 acres of private lands within the perambulation of the forest and in the purlieu without.³⁶ As Peter Roberts has suggested on the basis of a comparison between the number of listed freeholders on Minstead Manor and the claims listed in 1670, it would appear that the Eyre also deliberately attempted to limit the overall number of allowed claims.³⁷

170 years later the Register of Claims produced under the terms of the New Forest Deer Removal Act (1851) led to some 1,200 separate claims to rights in the forest being made.³⁸ As Colin Tubbs put it, beyond the interests of the Crown, the forest was an economy of smallholders who got by through exercising their common rights in and of the forest.³⁹ But while the huge growth in claims was in part a function of the breakup of some of the large estates into small freeholdings, this represents only a partial cause. Rather, the actual number of holdings also increased through encroachments

(‘purprestures’) being made on the forest, new holdings cleaved from the common and waste. Indeed, by 1851, while many of these had become enrolled and legally recognized, many others remained unofficial and illegal. If the *Abstract* of 1670 was supposed to clamp down on disputes and further ‘abuses’ of forest resources, it failed. The lack of adequate cartography⁴⁰ – the first systematic survey and map of the New Forest were not undertaken and published until 1787 and 1789 respectively⁴¹ – and keepers and wardens with little incentive to report and ‘throw’ down encroachments meant that the forest became a squatter’s haven.

c.1670-1740

In the period between 1669 and 1702 commissions into ‘waste’ in the forest were frequently held. This was not just a response to the discourse of ‘abuse’ but also a function of the desire to make forests productive through silviculture.⁴² Notwithstanding earlier silvicultural experiment of dubious legality –in the 1670s 40 acres had been planted at Alridge Hill and a 121-hectare ‘nursery’ for the growth of timber trees was created at Holme Hill – and the failure of a dedicated bill in 1692, the decisive point came with the passing of the New Forest Act of 1698.⁴³ The Act allowed for the enclosure at any one time of up to 6000 acres, of which 2000 could be enclosed immediately with a further 200 acres a year for the next 20 years.⁴⁴ It was not until 1702 that the first silvicultural plantations proper were established in the form of seven distinct plots totalling 1,022 acres.⁴⁵

While the surviving record of these commissions is uneven – in some cases we know nothing beyond the commission having being issued – there is no difficulty in discerning the principal concern of the commissions. For instance, the warrant for a commission issued into the ‘wastes, spoils and abuses since 1660’ in December 1676

details the ten questions the commissioners, who included Lord Warden Edward Noell and the two Surveyors General for the forests south of the Trent, were asked to consider. All related to timber (and wood) and its use, rights to its use, and accounts thereof.⁴⁶ What little we know from the period relating to encroachments is either recorded by virtue of the impact of purpresture upon timber or is thinly detailed. Thus, in August 1672 a complaint was received by the Treasury regarding an encroachment made in Norley Thorns, but the complaint was predicated not on the basis that ‘the ground there was ploughed up’ but because ‘certain woods’ were cut down.⁴⁷ Similarly, a letter from the verderers to the Treasury Lords in August 1698 regarding claims to fuel wood ‘by several of the adjacent inhabitants’, drew the response that while such rights should be allowed to be exercised in ‘such proportions as you think reasonable’, but that ‘no erections made since the 27th Eliz. (which are purprestures in law)’ should be allowed the same.⁴⁸

And there were encroachments. According to the 1673 Commission of Inquiry – which asked ‘what new erected tenements and cottages are there within or near the same Forest that have not been of ancient continuance’ – there had been new dwellings erected on recent encroachments in several walks of the forest. While we cannot be certain as to how systematic the evidence presented was, indeed in several cases no location was given for the new squats, 15 new dwellings were reported. Of these, two were erected for widows, suggesting an extension of existing settlements as families expanded, while multiple squats were constructed and extended existing settlements at Fritham and Burley, and at Lyndhurst, which was the major forest settlement and location of the forest courts. But as some of the forest officers testified to the inquiry, ‘how many more there are and how they and those are furnished with wood or whether they take any of His Majesty’s woods or to what value we know not.’⁴⁹

We also know from claims for expenses lodged by forest officers for 1670 – the very year of the Abstract – that regarder James Barrow had claimed expenses of 7/6 for three days surveying ‘the new erected cottages in Burly, Linwood and Godshill Bailiwcks and forbidding workmen’.⁵⁰ At a Swainmote held in September 1672 it was also presented ‘and proved by the verderers’ that on 26 June that year Henry King had ‘entered the forest in a place called Fritham’ and ‘without license’ built a dwelling house worth four pence per annum ‘where no house had been before’ ‘to the damage of the land of the beasts of the Lord King.’⁵¹ Henry King’s house was one of the two houses at Fritham related to the Inquiry of the following year, suggesting that the other – erected by William Dutton – had been erected since the Swainmote. Ergo, notwithstanding that Henry King entered into a recognizance at the Swainmote to the order that ‘he owe[d] the Lord King - £20’ on condition of appearing at the next Justice Seat this was no disincentive to encroach and squat in Fritham.⁵²

Evidence that encroachment and squatting were increasingly in the purview of the central state was attested by the fact that a warrant granted in 1689 to newly appointed Surveyor General Philip Ryley to survey the woods in *all* forests and parks in his charge south of the Trent explicitly asked ‘what purprestures or encroachments have been made in any part of the said forests, etc., and by whom and in what manner’.⁵³ Further, a 1691 New Forest specific Commission was issued not into the ‘abuse’ of timber, as had been the primary case with the earlier enquiries, but ‘to enquire of purprestures and encroachments in New Forest’ and ‘to seize same into their Majesties’ hands.’ Alas, as with most other commissions of the time, we have no further record.⁵⁴

We do, however, have the report from the 1698 House of Lords’ committee into ‘abuses’. While the report detailed ‘abuses’ of the timber – by the keepers, the woodward, the colliers (i.e. charcoal burners), and even by pigs – there is only one allusion to encroachment, and this through a question asked of a witness about a cottage lately made

copyhold. Yet the absence of explicit information is in itself telling. Given that the focus of the report was on the waste of timber, thereby supposedly preventing there being sufficient suitable trees in the forest to meet naval demands, evidently the impact of encroachment and the actions of squatters (unless they were ‘colliers’) was of minimal impact upon the forest’s biotic capacity. Indeed, the claim made by Commissioner Greenhill of the Navy that ‘few trees have a limb for the use of the Navy’ was shown to be a wild exaggeration, the impact of malpractice by the keepers and the woodward overstated.⁵⁵

Beyond the creation of the enclosures of 1702, enthusiasm for silviculturalism waned. Notwithstanding that the Act allowed for the initial enclosure of 2,000 acres, and the further enclosure of 200 acres annually for 20 years,⁵⁶ until a new wave of enclosures in the early 1750s, the 1,022 acres enclosed by 1702 remained the sum effects of the project. In part this was because of sustained opposition to the policy that common rights did not pertain to the enclosures as long as they were physically enclosed. All seven enclosures had their fences broken down soon after their creation by ‘disorderly persons’, the Treasury granting Surveyor General Ryley timber to repair them in March 1702. Similarly, the repaired fences of Roe Enclosure were set on fire by incendiaries in 1712. So fearful of reprisals were the local authorities that Ryley was unable to find two local magistrates to sit on commissions for further enclosures.⁵⁷

By the end of Queen Anne’s reign, and after some ‘fifteen years of maintenance’, the New Foresters, as Sara Morrison has put it, ‘had their way’ with the seven enclosures formally being thrown open in 1724.⁵⁸ The declining zest for silviculture mirrored a shift in the governance of the forest. Charles Wither undertook a survey of ‘abuses’ in forests south of the Trent on his appointment as Surveyor General in 1720,⁵⁹ after which his role in the forest became more reactive rather than proactive.⁶⁰ The same could be said of the Lord Wardens (the 2nd Duke of Bolton from 1714; the 3rd Duke from 1722, and

the Earl of Portsmouth from 1733 to the appointment of the Duke of Bedford in 1746) in their management of the forest in the 1720s and 1730s. The lack of systematic surveys on the surveyor side and the *apparent* lack of Swainmote courts in the period – a Swainmote held in 1746 noting that the court had ‘of late years... become obsolete’⁶¹ – were evidence of a declining intensity in the management of the forest.

Dated 16 January 1721, Withers report was based on a ‘survey’ he had undertaken of the New Forest and the other Hampshire forests the previous summer. Rather than being a detailed, systematic survey, the report offered an impressionistic account of the state of the forest. While there was an ‘incredible quantity of oak and beech timber’ in the New Forest of a quality and suitability for ships’ timbers that exceeded anywhere else in the country, several ‘abuses’ needed checking. The excessive cutting of browse by the keepers acted to destroy the cover, ‘the best nursery’ for young saplings, which being exposed meant that ‘thousands’ of young trees were lost every year to the grazing cattle. The charcoal colliers were engaged in systematic wood stealing not in the form of, so Withers argued, the occasional bundle of wood or the bough of a tree but by ‘lopping and felling whole trees’. ‘Encroachments & new erections’ were ‘another grievance in which ye forest abounds’, for which the commissioners were not empowered to act. The solution, reckoned Withers, was for the boundaries of the forest to be settled by the officers perambulating them.⁶² Whether this occurred we know not. We do know, however, that Withers’ attentions remained firmly on limiting ‘spoil’ of the forests. His memorial to the Treasury in March 1721 related that he received ‘daily informations of spoil in all his Majesty’s forests’, and that ‘exhibit[ing] informations in the Exchequer against the most notorious offenders, some few examples of which would be sufficient to terrify them in each forest’. ‘Nothing’ having been done to punish them lately, the offenders had ‘become unreasonably bold.’ As E.P. Thompson notes, several prosecutions did follow, something that no doubt further inflamed social relations in

southern forests at the peak of the conflict between the so-called Blacks and forest officers.⁶³ But these prosecutions did not relate to encroachment *per se* but rather to offences against the vert in terms of timber theft.⁶⁴ Withers' letter books also detail his continued frustration and attempts to prevent and put down encroachments and other 'misdemeanours' in the New Forest and elsewhere throughout the 1720s.⁶⁵

Beyond Withers' papers, the record of encroachment and squatting for the early decades of the eighteenth century is slight, the late seventeenth-century mania for commissions not being carried through into the eighteenth. Besides warrants for marking and cutting timber and the occasional case of timber and deer stealing, the central records of the office of the Surveyor General offer – as the authors of the reports into the state of woods and forests in the 1780s and 1790s would find out – slim pickings.⁶⁶ Similarly, the papers of the respective Lord Wardens and their officers on the management of the New Forest are slight.⁶⁷ Another possible source is records of the verderers in the Court of Attachment. A full series existed beginning in 1666 but since the start of the Second World War most of these have been either lost or destroyed. Some extracts survive from notes taken c.1900 by an earlier historian of the New Forest. For the period 1715-35 these *appear* to have been made in systematic fashion, though the dates of presentments to the court for encroachment are often not recorded. That said, we know that encroachments were presented on eight separate occasions between 8 March 1715 and 8 January 1716. Notes taken from the court book for 1717-1735 show that encroachments were presented on 52 separate occasions, and purprestures on 12 occasions, while what appears to be a survey made c.1726 details 92 cottages.⁶⁸ While comparisons are difficult to make with certainty because of the nature of this evidence, surveillance and forest law was evidently being deployed against encroachers and squatters in a reasonably systematic way both before and during Withers' reign as

Surveyor General. What we do not know is how these cases proceeded and what the outcomes were.

1740-1792

The 1740s witnessed a return to proactive, materially interventionist government from above in the New Forest. This was in large part due to the appointment in 1746 of John Russell, the 4th Duke of Bedford, who through his officers and agents instigated, as Roberts has noted, an efficient ‘system of control’.⁶⁹ This system also means that, unlike for the earlier decades of the century, the day-to-day management of the forest (at least from the Warden’s side of the *divisum imperium*) was well-documented. There is, however, some evidence of a shift occurring in the years before Russell’s appointment. His predecessor as Lord Warden, John Wallop, Lord Lymington and the 1st Earl of Portsmouth, instructed the groomkeepers in September 1739 not only to make drifts of the forest and present all offences at the Attachment Courts, but also to ‘Pull down all cottages and inclosures that shall for the future be attempted to be erected or made, and not suffer them on any pretence whatsoever to be finished.’⁷⁰ We also know from Castle Malwood underkeeper Samber’s records that at least one further instruction to hold drifts ‘when and as often as need shall to prevent’ ‘all surcharges’ was made in November 1743, suggesting a quickening of the pace of forest governance before the Duke of Bedford’s appointment.⁷¹ Even the Duke of Bedford before his appointment as Lord Warden had written to the Treasury regarding waste in the forest and ‘Submitting to the Lord of the Forest whether a new perambulation might be necessary at present to stop encroachments.’⁷²

The appointment of John Phillipson as surveyor general in 1745 also marked a turning point. From the start, Phillipson was active in regularly arranging supplies of

timbers for the navy from the forest, and in 1751 instigated, without informing Bedford, a new enclosure commission.⁷³ Not surprisingly, this generated huge tensions between the two men on either side of the *divisum imperium*, with Bedford issuing a charge of delinquency against Phillipson.⁷⁴ In relation to encroachment, though, there is evidence to suggest that both sides were *equally* vehement in opposing squatting but were being played off against one another.

What evidence we have of specific encroachments speaks of the further growth of already established communities. In September 1748 keeper Joseph Hinxman wrote to the Duke of Bedford to alert him to a campaign of terror being waged against his underling John West, hired to ‘look after the wood’ in Ashley Walk. West, a resident of Godshill Wood, had successfully prosecuted eleven persons for wood stealing in the form of lopping and taking whole trees. While we have no record of the Swainmote, we know from the correspondence that those found guilty lived at Wood Green, a settlement on extraparochial land on the north western forest fringe which ‘is a trespass and, all inhabitants live by pilfering and stealing out of the forest’. For his efforts, two of his horses and three of his cattle were stabbed and died, ‘which we suppose to be done in revenge by some of the gang’.⁷⁵ While the residents of Wood Green were not prosecuted for encroaching, we know that at subsequent Swainmotes others elsewhere in the forest were. Underkeeper Henry Petty of Bramble Hill Walk had been maliciously accused, he protested in June 1750 to Bedford, of stealing timber by three individuals from Bramshaw recently prosecuted for encroachment. One of the men had already erected a dwelling and one of the others had the necessary materials on the encroached site ready to build a house.⁷⁶

While we know that no encroachments had been presented to the Attachment Court held at the turn of 1750, Samuel Miller, Bedford’s newly-appointed steward but only on occasion in the forest, suggested that the Duke might consider issuing warrants

against encroachers. This would be 'of great service' in 'checking abuses'. Beyond that, Miller also suggested that 'considerable sums of money might be raised on the cottages in this Forest [by enrolling them and thus making the residents liable to rent]' as, so he believed, the 'principal occupiers of such cottages, would readily come into this affair.'⁷⁷ The Duke opted, so it would appear from subsequent pronouncements, to implement the spirit of this approach. In August 1751 Bedford directed that the groomkeepers present 'all new enclosures and encroachments made in the Forest at the courts and to throw down and to prevent any new buildings being erected on the waste'. The keepers of Whitley Ridge, Lady Cross and Castle Malwood were to pay particular heed to this directive, Bedford having 'seen many encroachments on the Forest in these Walks', those in Castle Malwood and Whitley Ridge presumably the emerging squatters' communities of London Minstead and East Boldre respectively. That the encroachment at the former place were located on the border of the Crown lands with Minstead Manor, and at the latter place on the border between Beaulieu Manor and extraparochial forest lands suggests that such border spaces were attractive to squatters for the likely belief that their regulation might slip between the regulation of the Manor and the Crown.⁷⁸

Bedford's new stance against encroachment further stoked the flames of unrest in the forest. Writing in fear that a 'good part of the Forest [will be] set on fire and burnt down' and having received a threatening letter, regarding John Smith, evidently fearful for his life, alerted Bedford to a warning issued by his son that:

I humbly think the pulling down little and small enclosures in the Forest beginning at the wrong end to reform the Forest while his Grace continues with such a set of villains as one half of the Keepers are who have no more respect for his Grace nor regard for the Forest than for many highwaymen.

The keepers were 'disaffected' and no better than 'the vulgar sort of people and cottagers to threaten in such a manner as they do'. Instead, reckoned Smith, another method might be adopted which would have 'preserved the Forest without all the noise and clamour' now being made in 'throwing out the enclosures, etc'. The problem was not just collusion between the keepers and the squatters, the former group 'tolerated to sell anything out of their walks', but also that deputy surveyor Coleman and Navy purveyor Hawkins regularly marked up timber under the pretence of it being for the navy but then taken and sold as fuel.⁷⁹

This antagonism between forest and woodland officers necessarily meant there was no common approach or cooperation in the management of encroachment in the forest. Moreover, the threats of violence and malicious prosecutions combined with acts of animal maiming evidently acted to terrify forest officers; attempts to prosecute timber stealers led to further threats, and the aforementioned acts of animal maiming and attacks against property further reinforced the atmosphere of terror.⁸⁰ Indeed, the episode became the stuff of legend. According to Rev. William Gilpin, rector of Boldre but better known as an aesthete and one of the originators of the idea of the picturesque, Bedford had been thwarted in his attempts to level the encroachments made at Beaulieu Rails. As Gilpin put it:

Where the manor of Beaulieu-abbey is railed from the forest, a large settlement of this kind runs in scattered cottages, at least a mile along the rails. This nest of encroachers, the late duke of Bedford, when lord-warden of the forest, resolved to root out. But he met with such sturdy, and determined opposition from the foresters of the hamlet, who amounted to more than 200 men, that he was obliged to desist whether he took improper measures, as he was a man of violent temper, -

or whether no measures, which he could have taken would have been effectual in repressing so inveterate an evil.⁸¹

Against such concerted opposition from the squatters, encroachment continued and enforcement against it wavered. By way of example, a recently made ten acre encroachment in Burley Walk, as presented by regarder Smith, was itself an extension of an earlier encroachment. This had been turned to meadow and ‘fenced’ in with a deep ditch and a high bank to keep out the deer, yet no action was taken. Evidently, this was far from the work of an impoverished squatter seeking to eek out on existence in the forest but the action of an established and opportunist farmer.⁸²

The strongest evidence of the failure of both sides of forest governance to either put down existing encroachments or prevent new ones came in the *5th Report* of 1789 and the associated map prepared by Thomas Richardson, William King and Abraham and William Driver, otherwise known as ‘Drivers’ map. According to Driver et al’s survey undertaken in 1787 there were 959 encroachments totalling 896 acres (detailed as 901 acres in the *5th Report*), or just under 1% of the overall acreage of the forest (including private lands, copyhold and leasehold lands). Lady Cross and Burley with Holmsley walks had the largest number of encroachments and the largest encroached area with 240 and 231 encroachments at 303 and 179 acres respectively. The encroachments in Burley and Holmsley were the emergent settlements of Burley and Bisterne Close, while the encroachments in Lady Cross – comprising 99 dwellings, of which 60 were listed as having been erected in the past 20 years – centred on Beaulieu Rails, the settlement that would become East Boldre.⁸³

If in terms of acreage encroachments represented small beer, the commissioners of the *5th Report* claimed that it was the actions of the squatters who had erected cottages on their encroachments that were the real problem. ‘So long as the Cottagers remain in

the Forest without committing Depredations, their cottages do little Harm', the commissioners asserted

but it would tend much to the Preservation of the Forest, if the cutting, stealing, or lopping any Tree... should, if committed by the Possessor of any such Incroachment, be punished by turning the Offender out of Possession of the Cottage or Land so held by the Indulgence of the Crown'.⁸⁴

Ergo, encroachment and even squatting were not problems *per se* – providing it did not affect the sylvicultural schemes – but settlement of the wrong sort of person was. The Drivers' survey had detailed 458 dwellings (including separate tenements) on encroachments in the forest, with concentrations at Beaulieu Rails (Lady Cross Walk), Wood Green (Ashley Walk), Burley and Bisterne Close (Burley and Holmsley Walk), the edge of Lyndhurst (Ironshill Walk), London Minstead and what would become Bartley (Castle Malwood Walk). Moreover, while there were 'only' 29 encroachments with 22 dwellings in Bramble Hill Walk, Abraham and William Driver, the surveyors of that walk, noted that they centred on the extra-parochial 'No Mans Land – This is a small piece of Ground which from the name appears to have no owner [though they asserted that it was definitely Crown waste], however several people are taking possession of it & inclosing it very fast'.⁸⁵

The extent to which the 5th Report framed encroachments as a central 'abuse' of the forest is perhaps best attested to by the fact that in the list of abuses detailed encroachment was the last detailed, the single sentence merely noting that encroachments were 'numerous' and the inhabitants of the cottages caused 'great Depredations' on the timber and wood without 'effectual Means used for the Prevention'.⁸⁶ Indeed, there is no systematic analysis offered of encroachment beyond

that enumerated by 'The Drivers' survey – noted on page six of the report and not again thereafter – and that some of the encroachments had been carried out by the proprietors of the neighbouring estates. Beyond the survey, some further evidence was offered by the various forest officers questioned, but this served to reinforce the perception that the existing mode of forest governance was ill-suited and ill-equipped to deal with the 'problem'. For instance, John De la Warr, the master keeper of Bolderwood and Eyeworth walks, related that he knew 'not of Intrusions or Incroachments' in his walks. Similarly, Peter Bathurst, master keeper of Broomy Walk, stated that he did not 'think that any material Incroachments have been made in his Walk since he was appointed Master Keeper.' Contrast this with the evidence of Burley and Holmesley Walk groomkeeper Thomas Holloway who admitted that 'there are many Incroachments within his Walks, some made before and some since his Appointment, several of which he has thrown open, and some of those have been taken in again.'⁸⁷

Indeed, against the lack of specific knowledge of the keepers, their underlings showed a more detailed understanding of the nature of encroachment in the forest. Of the twelve groomkeepers questioned, all but groomkeeper Maynard of Ashurst Walk detailed encroachments made in their walks, while groomkeeper Toomer claimed that none had been made in Broomy Walk since his appointment in 1783. The other groomkeepers presented a similar story of large numbers of encroachments having been made past and present, and showed that notwithstanding systematically presenting new encroachments to the forest courts, when they were subsequently levelled the encroachments were soon again enclosed. However, as groomkeeper Cooper of Eyeworth asserted, the relative infrequency of the forest courts meant that it was difficult to get orders issued to level encroachments. Likewise his counterpart for Ashley Walk detailed that he had presented every new encroachment since his appointment (in 1763)

but that the forest courts were held so infrequently thus most encroachments remained unimpeded by forest governance.⁸⁸

The solution, such as it was, recommended by the authors of the *5th Report* was that the ‘Commissioners should be empowered to reclaim them, and to restore to the Forest such of them as may interfere with any Plan for the Increase of Wood and Timber’.⁸⁹ Those encroachments that did not obstruct the plan to effectively enclose the New Forest for the growth of timber were to be offered for sale ‘on reasonable Terms’ to the possessors of the plots. It went on, the

Commissioners should have discretionary Powers... for reclaiming those Incroachments, or for shewing Indulgence to Possessors under particular Circumstances. So long as the Cottagers remain in the Forest without committing Depredations, their Cottages do little Harm.⁹⁰

The *5th Report* formed the basis of a Bill introduced to the House of Commons in January 1792, allowing for the enclosure of 2000 acres a year for seven years in addition to the 6000 acres allowed under the Act of 1698. When these 20,000 acres were beyond harm from commoners’ stock and therefore thrown open, a further 20,000 acres could also be enclosed. Moreover, the Bill proposed that the keepers would be obliged to report all encroachments within twelve months of their being made, it hitherto not being a statutory requirement of their office. As understeward RF Mansfield noted on the bill, any powers ‘to treat with the possessors for the surrender of the encroachments’ would need to be exercised with ‘great caution’ to avoid disputes. Furthermore, any Act of Parliament would need to specify the age at which cottages were no longer considered to be encroachments, while keepers should be forced to be proactive in preventing encroachments. The twelve months allowed in the bill for keepers to report

encroachments was also considered ‘too great’, Mansfield suggesting a maximum of a month for cottages and three days for encroachments. These and other suggested aspects of the bill represented ‘so great a Change in the management of the Forest’ that Mansfield cautioned that ‘too greater care cannot be taken in making clear the changes to the inhabitants’.⁹¹ Despite initial support from ‘gentlemen with property in New Forest’, the Bill provoked considerable opposition and was voted down, so that the scheme proposed in the *5th Report* to remove the ‘problem’ of encroachment was never carried out.⁹²

1792-c.1815

The failure of the New Forest Bill in 1792 came at a critical time. The impact of the Napoleonic Wars on rural England are well-documented, with high food prices acting as a spur to further enclosure while the failure of wages to keep up with food price inflation and the impact of severe dearth and market manipulation led to both poor law administered wage subsidies in the form of the infamous ‘Speenhamland scheme’ and concurrent waves of food rioting in 1795-6 and 1800-1.⁹³ While the same situation pertained in New Forest – the Mayor of Romsey was fearful in September 1800 that a ‘formidable body...many hundreds’ of ‘New Foresters’ was to visit the town to riot against a spike in food prices⁹⁴ – there were also forest-specific dynamics. The huge surge in the construction of new naval vessels put considerable pressure on the Surveyor Generals to provide timber: the New Forest, being the biggest Crown forest, was expected to be the biggest supplier.⁹⁵ The war effort also led to a boom in shipbuilding at Buckler’s Hard in Beaulieu parish, thereby creating a surge in demand for workers.⁹⁶ Thus high food prices acted as a further incentive to encroachment, while employment opportunities in the forest acted to attract individuals and families who needed housing.

Furthermore, Gilpin noted that by the 1790s, the erection of squats had assumed an almost professional degree of organisation. Beyond the persistence of the practice of erecting overnight houses – so-called because of the popular belief in the New Forest, and elsewhere, that if a fire was kindled before dawn in a rudimentary dwelling erected during the course of the night ‘then it was his own’ – Gilpin detailed that small wooden houses were being constructed in Southampton and wheeled into the forest at night. Duly ‘set down, occupied, and afterwards added to by degrees’ and the surrounding forest ‘taken in from time to time as opportunity offered’ so squats evolved into ‘splendid residences’.⁹⁷

The example of Beaulieu Rails is instructive. Against the Duke of Bedford’s earlier attempts to clear the encroachments, the settlement survived and continued to expand into the 1790s. In 1797 the keeper of Lady Cross Walk complained to the Boldre Vestry about the number of encroachments and of his ‘inability to suppress them without the assistance of the parish’. The vestry duly resolved, not having the legal authority itself to throw down the encroachments, ‘that a sufficiency of men he hired to aid in throwing out the encroachments, at the expense of the poor rate.’⁹⁸ Here, encroachment and squatting were driven by the aforementioned growth of Buckler’s Hard shipyard from the mid 1740s on the Duke of Buccleugh’s neighbouring estate. Also, rope-making flourished in Beaulieu village, while brickmaking at Baileys Hard and Pitts Deep and the iron works at Sowley (in operation until 1822) offered further employment opportunities.⁹⁹ Encroachment was thus driven by those who had migrated into the area to take employment in and around Beaulieu but for whom Beaulieu parish, an archetypal ‘closed’ estate parish, did not wish to provide cottages for fear of the migrants becoming settled and thus chargeable to the parish poor rates. There is even evidence that in the early nineteenth century squatting along the rails was driven by Beaulieu parishioners erecting cottages themselves, presumably to house their workers

and/or to profit from rental income, Boldre Vestry complaining in 1801 of ‘intrusions into this parish by the parishioners of Beaulieu by building cottages.’¹⁰⁰

The continued growth of Beaulieu Rials through further encroachment and the erection of new squatters’ cottages was mirrored throughout the forest in the late 1790s and into the early years of the 1800s, with existing squatters settlements continuing to grow. Before the 1848 Select Committee report which led to the ‘Deer Removal Act’, the last systematic record of encroachment in the forest was produced in 1802 as ordered by the provisions of the 1800 and 1801 New Forest Acts, passed to increase the power of the Exchequer to create new sylvicultral plantations and limit ‘abuses’.¹⁰¹ As well as setting out the boundaries of the forest through undertaking a new perambulation and creating a new map (produced by surveyor FJ Kelsey) detailing anew the boundary of the forest,¹⁰² the commissioners ordered that the groomkeepers make returns of all encroachments in their walks. In a process beginning on 28 September 1801 and not completed until 23 October 1803, 654 encroachments were presented comprising 334 acres and 481 houses. Of these, 313 houses and 133 acres of land were ‘discharged’ (i.e. allowed), in which category most – but not all – were well-established and small encroachments. 65 acres and 68 houses were judged to have been taken in from the forest in the previous 12 years, and 135 acres and 100 houses were over 12 years old but not discharged. Of these two latter categories, some of the possessors were given the opportunity to take out a lease on their encroachments.¹⁰³

From this it is evident that considerably fewer encroachments and a much reduced acreage was being considered compared to ‘The Drivers’ survey of 1787 (334 acres compared to 901 acres respectively), and this notwithstanding that at least 65 acres had been cleaved from the forest and a further 68 houses had been erected since. Assuming the figures for ‘new’ encroachments to be reasonably accurate – though there is the possibility that recently appointed groomkeepers would not have the depth of local

knowledge compared to their long-served colleagues – it is clear that that in terms of acreage there had not been a decisive quickening in the pace of encroachment. However, in terms of the number of houses erected during the previous 12 years, there had been a marked upturn in squatting. It is also necessarily the case that unless in the period since 1787 forest officers had managed to level and return to the forest 632 acres – which evidence suggests was definitely not the case – then there had been an acceptance that most encroached land was forever lost to the forest. Given this is the likely scenario, adding to the 133 further acres discharged shows a system not only not able to cope with encroachment but also resigned to losing older encroachments, and even recent cottage only encroachments, from the forest. Indeed, that the major focus of the 1800 and 1801 Acts was extending the area given over to silviculture meant encroachment represented only a small threat. Besides, any encroachments in areas where new silvicultural enclosures were planned could be levelled. Between 1808 and 1811 4,776 acres of the New Forest were enclosed as silvicultural plantations, with a further 777 acres agreed by a commission in 1814 and enclosed between 1817 and 1823.¹⁰⁴

None of this is to say that encroachment was not a live issue in the early nineteenth century. As noted, Boldre vestry complained about the impacts of population growth in their parish in 1811, mirroring a set of concerns that the rate of encroachment was again increasing. At the August 1807 meeting of the Attachment Court, the groomkeepers presented to the verderers ‘such an increased number of inchroachments against the forest that it appeared to us necessary to gain immediate representations from your Lordships [of the Treasury]’. In the previous year, 74 new encroachments were made, ‘greater...than in any former year’, while in the current year 130 encroachments had been made with 60 acres taken from Lady Cross Walk alone. Moreover, whereas formerly encroachments had ‘rarely exceeded a few perches of land and mostly made by the poorest people’ – this is an exaggeration but the point holds – now ‘larger

encroachments are made by men of substance who are prevailing themselves of 6-8 acres – will be encouraged to go further if not stopped and will encourage others.’ Thus, encroachment was shifting from a problem wherein ‘the most evil of the offence arose from the building of cottages on the pieces of stolen land’ which were ‘remote from other habitations, extra-parochial and not easily subjected to observations or enquiry and thus became dens of thieves from which the greatest part of the offences of other kinds but especially the mischief of the timber proceeded’ to one of capital accumulation.¹⁰⁵ The judgement offered was that ‘an immediate legal remedy’ was needed and that ‘no pains be spared in ascertaining the incroachments complained of and in pursuing effectual measures for laying them again in the Forest.’ And notwithstanding the possibility of ‘a great deal of violence and tumult’ resulting, it was imperative that action was taken without delay by issuing notices that ‘unless they are removed by a certain day (and it should be soon) effectual measures will be taken against them by the Crown.’ Further, ‘Particular attention should be made to those encroachments which are said to have been made by men of substance who have no excuse either through ignorance or distress to cover the illegality of their conduct’, for ‘if they are not corrected’ it would be ‘impossible to proceed against [the] lesser offenders’.¹⁰⁶

So anxious were the local forest officers that a further statement by Charles Harbin, deputy steward of the forest, encouraged by verderer and Christchurch MP George Rose, was transmitted to the Treasury Solicitor with the request that ‘the same may as soon as possible be brought to the attention of the attorney general.’ Harbin noted that while the verderers from time immemorial had after hearing complaints of encroachments ordered such land to be thrown open and the cottages to be taken down, he was no longer sure that they had such legal powers. The words of 9 and 10 William 3rd c.36, s. 6 [the New Forest Act, 1698] ‘appear not to sanction such proceedings which allows for breaking down inclosures’ while such powers manifested in 39th and 40th Geo

3rd c. 86 (The New Forest Act of 1800) were suspended until 'a map of the Forest shall be deposited in the Court which has not yet been done'. The subsequent judgement was that while the verderers were not sanctioned by law to levy fines until the map was produced, encroachments made since the New Forest Act could be removed using that legislation while older encroachments should be removed using the older Act.¹⁰⁷

Nor did it end here. A further memorial was sent to the Treasury in early November 1807 complaining that due to 'the inefficiency of our power' the encroachers have grown bolder 'and have given fresh and positive proofs of a determination to maintain their Encroachments against any authority we can exert.' The only remedy to this 'serious evil' was, the verderers asserted, 'your lordships giving immediate actions to bring of trespass' as the offenders were 'persons of much more substance than we formerly had to deal with'. The response was that it was now 'absolutely necessary that some solicitor on the Spot should be employed under the directions of the Treasury in these Suits'.¹⁰⁸

Conclusions

The early years of the nineteenth century represented the highpoint of encroachment and squatting in the New Forest.¹⁰⁹ Thereafter the practice of encroachment and the rhetoric against it changed. The shift from encroachment being articulated as an abuse carried out by the poor squatter to instead being a problem caused by existing landowners seeking to opportunistically extend their holdings and/or their rentals in a time of high inflation, no doubt stiffened governmental resolve due to the change in scope and scale. The tone and solutions offered by the Treasury in 1807 show that encroachment was now perceived to represent a threat to the government's scheme of sylvicultural enclosure,

while the complaints of the verderers show, after decades of antagonism, a coming together in purpose of the two sides of forest governance.¹¹⁰

The discourse of squatters as abusers of the forest's resource and their cottages as habitations of idleness, vice and lawlessness is necessarily overplayed. On one level it is a self-evident truth that without small-scale encroachments and without the squatters using the wood and timber of the forest to get by and turning their animals out into the forest to graze, there would have been a greater common pool of biotic resource. But the idea that squatters were unsustainably using the resource of the forest and that schemes needed to be externally imposed to conserve the timber is untrue. At the time of Driver *et al's* survey, only 1% of the forest had been encroached, while the lack of timber in the sylvicultural plantations had little to do with the actions of those commoning their stock in the forest or woodstealers, but more to do with mismanagement. Indeed, in 1710 there were recorded to be 12,476 oaks fit for the navy while by 1764 the number had increased to 19,836, declining thereafter to 13,043 suitable oaks in 1783. Thus, whatever the rhetoric of abuse, the number of oak trees that could have yielded naval timbers did not decrease, despite the fact that between 1791 and 1786 the navy took 23,000 loads of oak (or at least 11,500 trees) from the forest.¹¹¹ If the occasional squatter took the occasional oak tree to construct their cottage or to sell, the impact was as nothing compared to the usage of the navy or to what the officers of the Lord Warden took for fuel and repair of their lodges and other forest property. In terms of biotic resource, it is evident that the impact of squatters occurred at a sustainable level, at least up to the beginning of the nineteenth century. Besides, as Tubbs has shown, forest commoners – official or unofficial – used a far greater range of forest resources than wood and timber.¹¹² And after all, the regular process of enrolling and thus legitimising such small-scale squats in successive surveys attests that whatever the rhetoric of the different branches of forest governance, ultimately a pragmatic politics of settlement won out.

And in this way, the social and cultural fabric of 'Tubbs' petty stockholder forest was established in this period.¹¹³

As the continued existence of settlements like East Boldre, Minstead, and Nomansland attests, the squatters won the battle. Ultimately squatters' settlements had to be considered differently, as potential assets rather than as unlawful incursions. Emergent settlements like East Boldre provided a flexible workforce for farms on and at the edge of the forest as well as in emergent forest industries, including the dockyard at Buckler's Hard. Small incursions upon commons and wastes were of little material consequence anyhow. As Gilpin saw it, such encroachments represented a mere 'petty trespass on a waste'.¹¹⁴ The strategy of making the encroachment official by entering the property on manorial rolls (and charging quit rents) or into leases or charging ground rentals, turned an unlawful incursion into a source of income.¹¹⁵ If this was quite different in spirit from earlier official calls to assart as a solution to stagnant population growth, the 'continuous process of legitimisation over time' had a similar effect.¹¹⁶ That Daniel Defoe's early eighteenth-century scheme to settle Palatine refugees in the New Forest as a way of increasing population and national product was even considered by the government is testament to the perceived need to not only make forests pay but also to settle the poor and landless.¹¹⁷

The extent to which we can make sense of encroachment in the New Forest – and upon other forests and heaths – as a solution to a housing problem is unclear. In part, the archive of the resort to squatting is a function of the changing view and enthusiasms of the central state as played out in the forest, and the uneven contours of how 'abuses' were considered and defined locally. Indeed, in much of what is recorded we see not the squatters themselves but their actions, or rather a chain of events in consequence of their actions. In earlier documents there is little explicit evidence as to the occupations of squatters. In such cases as squatter Henry King with his house valued

at 4d per year and the threatening letter writers and animal maimers in the early 1750s the inference is that, as Gilpin also suggests, squatters were ‘poor and wretched in the extreme’ who got by on their guile and by living on the resources of the forest.¹¹⁸ The 1803 survey offers greater insight and nuance. Where the occupations of squatters were recorded – the inference of no occupation being listed that the individual had no discernible employ but got by on working their small plot and eeking out an existence from the forest – we see the emergence of full and complex communities. At Wood Green, for example, labourers, publicans (at the Fighting Cocks public house), sawyers (with a working sawpit and saw house), shoemakers, blacksmiths, and widows were listed as living and working in squats. Even the parish officers of Breamore were found to be in possession of a squat on a recently extended encroachment. There were also, as at Beaulieu Rails, petty capitalists in possession of multiple tenanted properties built on encroached land, the eighteenth- and early nineteenth-century equivalent of buy-to-let landlords. As noted, other encroachments were carried out not by the poor seeking a space to dwell, but by existing agriculturalists wishing opportunistically to extend their farms and to landowners similarly attempting to increase their holdings. Again, the uneven nature of forest governance created the institutional spaces and opportunities for this to happen.¹¹⁹

Squatting could be as much elite as demotic, a form of accumulation by dispossession and profit-seeking as much as a form of subsistence. And whatever the social status of the squatter, ultimately all acts of encroachment are acts of dispossessing enclosure. To render all previous encroachments as small scale, to paraphrase Peter Linebaugh, ‘enclosures from below’, the acts of those fleeing from the exclusionary effects of agrarian capitalism elsewhere, is to miss the point.¹²⁰ The lived and political reality was more complex, a hidden history of housing and dwelling that complicates the neat binaries – capitalists versus the dispossessed proletariat, landed versus landless – as

told of the effects of agrarian capitalism. Indeed, as with Karl Jacoby's study of the resistance to conservationist practices in US national parks,¹²¹ in the New Forest forms of community sanction were deployed against those who transgressed accepted bounds of action. Not only were forest officers and silvicultural enclosures subject to a popular, rough justice, but in occasionally acting as informants against encroachment it is also evident that forest inhabitants would intervene when the biological basis of their of life was threatened, whoever the subject of their ire.

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- ¹⁷ T. Fairfax, *The Speeches of the Lord Generall Fairfax and the Other Officers of the Armie, to the Diggers at St George's Hill in Surrey* (London, 1649).
- ¹⁸ See C. Hill, *Liberty Against the Law: Some Seventeenth-Century Controversies* (London, 1996), esp. chap. 23; J. Gurney, *Brave Community: the Digger Movement in the English Revolution* (Manchester, 2007).
- ¹⁹ B. Short, 'Conservation, Class and Custom: Lifespace and Conflict in a Nineteenth-century Forest Environment', *Rural History*, 10, 2 (1999), pp. 127-154, 146, 131; *Idem.*, *The Ashdown Forest Dispute 1876-1882: Environmental Politics and Custom*, Sussex Record Society volume 80 (Lewes, 1997). For the 'pre-history' of encroachment in Ashdown see Linda Merrick's excellent study: 'Without violence and by controlling the poorer sort': the enclosure of Ashdown Forest 1640-1693, *Sussex Archaeological Collections*, 132 (1994), 115-128.

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- ²⁰ C. Griffin, 'More-than-human histories and the failure of grand state schemes: silviculture in the New Forest, England', *Cultural Geographies* 17,4 (2010), pp.454-6.
- ²¹ The New Forest with Forest of Dean and Parkhurst on the Isle of Wight were the exceptions to the proposed sale: C. Firth and R. Rait, *Acts and Ordinances of the Interregnum*, 3 vols (London, 1911), vol II pp.783, 811. In eventuality, few forest sales actually occurred: S. J. Madge, *The Domesday of Crown Lands: A Study of the Legislation, Surveys, and Sales of Royal Estates under the Commonwealth* (London, 1938).
- ²² C M.A. Everett Green (ed.) *Calendar State Papers Domestic, Volume 42* (London, 1879), December 1653; The National Archives of the UK, F 20/48, Abraham and William Driver, Survey of Castle Malwood, 1787.
- ²³ 'Preservation of Woods', 35 Hen. VIII c.17.
- ²⁴ N.D.G. James, *A History of English Forestry* (Oxford, 1981), p. 136; G. Hammersley, 'The Crown woods and their exploitation in the sixteenth and seventeenth centuries', *Bulletin of the Institute of Historical Research*, 30 (1957), pp.136-7.
- ²⁵ See R. Hoyle, 'Disafforestation and drainage: the Crown as entrepreneur', in Hoyle (ed.) *The Estates of the English Crown*, p.356.
- ²⁶ J. Manwood, *Manwood's Treatise of the Forest Laws* (London, 1717), *passim*. Also see John Langton and Graham Jones' glossary of forest terms: <<http://info.sjc.ox.ac.uk/forests/glossary.htm#R>> [accessed 26 January 2016].
- ²⁷ *Fifth Report of the Commissioners of His Majesty's Woods, Forests, and Land Revenues* (Parl. Papers 1789, xlv) [herein *5th Report*], pp.4-5. On the function of manorial courts see: B. Waddell, 'Governing England through the Manor Courts, 1550–1850', *Historical Journal*, 55, 2 (2012), pp.279-315.
- ²⁸ E.P. Lewis, *Historical Inquiries, Concerning Forests and Forest Laws: With Topographical Remarks, Upon the Ancient and Modern State of the New Forest, in the County of Southampton* (London, 1811), pp.74-89.
- ²⁹ James, *A History of English Forestry*, p.136; R. Reeves, *To Inquire and Conspire, New Forest Documents 1533–1615* (Lyndhurst, 2008), p.i.
- ³⁰ Manwood, *Treatise of the Forest Laws*, p.371.

³¹ 'Erection of Cottages Act', 31 Elizabeth c.7. The only exemption in forests related to the cottages of under-keepers and warreners (section 5). An examination of the use of this act requires a separate systematic study of all informations, presentments and indictments at the Quarter Sessions and Assizes, and as such is beyond the bounds of this paper. On the workings of the act see: G. Walker, *Crime, Gender & Social Order in Early Modern England* (Cambridge, 2003), pp. 237-49. My thanks to the referees for this point.

³² D. Stagg, *Calendar of New Forest Documents: Fifteenth to the Seventeenth Centuries*, Hampshire Record Series Volume V (Winchester, 1983), pp.908-17.

³³ J. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven, CT, 1998), p.360, n.11.

³⁴ Langton, 'Forests in early-modern England and Wales', p.9

³⁵ S. Morrison, 'Forests of Masts and Seas of Trees: The Restoration Navy and the English Royal Forests', in N.L. Rhoden (ed.) *English Atlantics Revisited. Essays Honouring Professor Ian K. Steele*, 136-173. Montreal and Kingston (Montreal, 2007), esp. pp.136-45.

³⁶ T.N.A., E 32/179-181, New Forest Eyre, 1670, calendar and register of claims [subsequently collated and published as *Abstract of all the Claims on the New Forest... as Entered at the Lord Chief in Eyre's Court... 1670* (Salisbury, 1776) and herein *Abstract of Claims*, 1670]; C. Tubbs, 'The development of the smallholding and cottage stock-keeping economy of the New Forest', *Agricultural History Review* 13 (1965), pp.25-6.

³⁷ P. Roberts, *Minstead: Life in a 17th Century New Forest Community* (Southampton, 2002), p.20.

³⁸ Of these 850 were approved: T.N.A., F 24/107, Register of New Forest Claims, 1858.

³⁹ Tubbs, *passim*.

⁴⁰ *Third Report of the Commissioners of His Majesty's Woods, Forests, and Land Revenues* (Parl. Papers 1788, ii) [herein *3rd Report*], pp.3-4.

⁴¹ *5th Report*.

⁴² For the systematic study of the resort to silviculture in the New Forest published over three papers see: D. L. Stagg, 'Silvicultural inclosure in the New Forest to 1780' and 'Silvicultural inclosure in the New Forest from 1780 to 1850', and 'Silvicultural inclosure in the New Forest

from 1850 to 1870', *Proceedings of the Hampshire Field Club and Archaeological Society*, 45 (1989), pp. 135-45, 46 (1990), pp. 131-43, and 48 (1992), pp., 143-59.

⁴³ T.N.A., LR 9/17/898 and 900, Deputy Woodward's Accounts, 1670/1 and 1672/3, cited in R. Reeves, *Use and Abuse of a Forest Resource, New Forest Documents 1632 - 1700* (Lyndhurst, 2006), pp. 66-7 and 80-1.

⁴⁴ The Act also allowed that once the trees within the enclosure were deemed to be out of danger from browsing animals, for the enclosures were to be thrown open, and an identically sized area of forest enclosed: 9 & 10 William III, c.36.

⁴⁵ Griffin, p.457.

⁴⁶ *Calendar of Treasury Books*, vol. v, 1676-9, Entry Book, 20 December 1676, pp.407-16.

⁴⁷ *Calendar of Treasury Books*, vol. iii, 1669-72, Entry Book, 31 August 1672, pp.1293-1302.

⁴⁸ *Calendar of Treasury Books*, vol. xiv, 1698-9, Warrants etc, 16 September 1698, pp.117-38.

⁴⁹ T.N.A., E178/5465, 1673 Commission of Inquiry [herein 1673 Commission], question 13 and subsequent answers. This is probably a reference to the Preservation of Timber Act (27 Elizabeth c.19).

⁵⁰ Reeves, *Use and Abuse*, p.43

⁵¹ British Library, Add Ch. 56262, New Forest Swainmote, 14 September 1672, reproduced in Reeves, *Use and Abuse*, pp.89-90 [herein 1672 Swainmote].

⁵² 1673 Commission; 1672 Swainmote, p.93.

⁵³ T.N.A., LR 1/19, fo.68, Warrant for Philip Ryley to survey Their Majesties Forests, Parks, etc., and certify a state thereof. My thanks to Richard Reeves for this reference.

⁵⁴ *Calendar of Treasury Books*, vol. ix, 1689-92, Entry Book, November 1691, p.1384. The two warrants – for the survey and the New Forest specific Commission of 1691 – were evidently related and evidence of a re-energizing of woodland forest policy under Ryley. This culminated immediately in the aforementioned (failed) bill of 1692 and ultimately in the (successful) New Forest Act of 1698.

⁵⁵ Parliamentary Archives, HL/PO/JO/10/1/506/1255/J, Report from the Lords Committees appointed to examine the miscarriages in the New Forest, approved 4 July 1698.

⁵⁶ 'New Forest Act', 9 & 10 William III, c.36.

⁵⁷ *Calendar of Treasury Books*, vol. xvii, pt. I, p. 169; Hampshire County Record Office [herein H.C.R.O.], 149M89/R4/6122, Extract of a letter from Mr. Hawkins, Purveyor, Lyndhurst 12 January 1756 quoted in 'An Account of Several Acts of Parliament', made for the Preservation of Timber &c. within His Majesty's Forests and Elsewhere particularly in the New Forest'.

⁵⁸ Morrison, p.157.

⁵⁹ H.C.R.O., 87A09/2/2a, Report to the Treasury on a survey undertaken by Charles Wither of His Majesty's woods and the abuses committed therein, January 1720/1, in Wither's letter book, pp.77-88.

⁶⁰ Much of his attention from the early 1720s was taken up by the challenge of the so-called Blacks in other southern forests: E.P. Thompson, *Whigs and Hunters: On the Origins of the Black Act* (London, 1975), pp. 39, 136. John Broad is currently researching Withers' role in putting down 'Blacking'.

⁶¹ H.C.R.O., 149M89/R4/6125, Presentments made by the Grand Jury at a Court held for the New Forest, 15 September 1746. Note, the apparent lack of Swainmotes does not necessarily imply that none were held, for, as with all other aspects of New Forest governance in the early decades of the eighteenth century, the archive is clearly deficient.

⁶² H.C.R.O., 87A09/2/2a, Report to the Treasury on a survey undertaken by Charles Wither of His Majesty's woods and the abuses committed therein, January 1720/1, in Wither's letter book, p.79.

⁶³ *Calendar of Treasury Papers*, vol. vi, 1720-8, Volume 233: January 12 – 31 March 1721, pp.39-52; Thompson, p.43 n.1. The Blacks were forest-based poaching gangs active in the forests of the Berkshire-Hampshire-Surrey border, so-called because of their going about incognito with blackened faces, who deployed the manifold tactics of rural terror in opposition to the reinvigoration of forest law and attempts to limit customary rights and practices.

⁶⁴ T.N.A., T27/23, Treasury Out-letter books, p.153.

⁶⁵ H.C.R.O., 87A09/2/3, Letter Book of Charles Withers, 1722-29.

⁶⁶ *3rd Report*, p.4.

⁶⁷ Records of the 3rd and 4th Dukes of Bolton's holding of the office of Lord Warden are scant, the extant papers relating to Hampshire being concerned with the administration of their estates rather than the forest: see H.C.R.O., 10M57/E1-22, various estate papers.

⁶⁸ My thanks to Richard Reeves, who holds these notes, for this reference.

⁶⁹ P. Roberts, *Ruin and Reform, New Forest Administration 1739 – 1769* (Lynhurst, 2007), p.xxiv.

⁷⁰ H.C.R.O., 149M89/R4/6129, Lord Lymington's (John Wallop, 1st Earl of Portsmouth) instructions to the Groom Keepers, 20 September 1739.

⁷¹ H.C.R.O., 149M89/R4/6129, William Samber's instructions for a drift, 19 November 1743.

⁷² H.C.R.O., 149M89/R4/6127, heads of letter from the Duke of Bedford to Lords of the Treasury, re: waste in the New Forest, nd [c early 1740s]

⁷³ T.N.A., LR4/6/17, 29, 48 and 7/5, 15, 26, 47, 48, 49, 60 and 61, orders for supply of Navy timbers, 1746-1757; H.C.R.O., 149M89/R4/6141/15, Richard Birt to Robert Butcher, 5 January 1751.

⁷⁴ Lord Glenbervie's unpublished manuscript of the New Forest and Forestry (c.1814), p.4.

⁷⁵ H.C.R.O., 149M89/R4/6141/62, Joseph Hinxman, Hinton near Chrsitchurch, to Duke of Bedford, 26 Septemer 1748.

⁷⁶ H.C.R.O., 149M89/R4/6141/31, Henry Petty, undekeeper, to Duke of Bedford, nd. C. June 1750.

⁷⁷ H.C.R.O., 149M89/R4/6141/13, Samuel Miller (Lord Warden's steward from late 1749), Lyndhurst to Robert Butcher, Bedford House, London, 16 January 1750.

⁷⁸ H.C.R.O., 149M86/R4/6142, Directions by Duke of Bedford, 11 August 1751.

⁷⁹ H.C.R.O., 149M89/R4/6142, John Smith (regarder), New Forest to [unclear], 11 November 1751.

⁸⁰ For instance see the attacks and threats against underkeeper Throckmorton's property and person: HRO, 149M89/R4/6124, Affidavit of John Throckmorton (underforester and underkeeper), Henry Bannister (husbandman), Richard Howells (servant to Throckmorton), John Ranger (labourer and late servant to Throckmorton), and Susanna Brumfield (servant to Throckmorton), and two threatening letters, various dates 1753.

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- ⁸¹ W. Gilpin, *Remarks on Forest Scenery, and Other Woodland Views, Volume 2*, ed. T.D. Lauder (Edinburgh, 1834), p.122.
- ⁸² H.C.R.O., 149M89/R4/6125, John Smith, information regarding waste in Burley and Homesley walks, 13 April 1756.
- ⁸³ T.N.A., F 20/48 Survey of the New Forest by the Commissioners appointed by Act of 26 Geo. III. (1787); *5th Report*, pp.4-5. For the associated plans see T.N.A., F.17/169.
- ⁸⁴ *5th Report*, p.34.
- ⁸⁵ T.N.A., F 20/48 Survey of the New Forest by the Commissioners appointed by Act of 26 Geo. III. (1787), p.107.
- ⁸⁶ *5th Report*, p.21.
- ⁸⁷ *5th Report*, pp.63, 66, Answers of John Richard Earl De La Warr and Peter Bathurst, 1 June 1787, and Thomas Holloway, 21 November 1788.
- ⁸⁸ *5th Report*, Appendix 22, Abstract of evidence of groomkeepers, pp.70-86.
- ⁸⁹ The plan being that the Crown should relinquish its claims to deer if in return commoners gave up their rights to most of the Crown lands. This would allow much of the Forest to be devoted exclusively to silviculture whilst on the remaining lands those commoners who would not sell their rights would have unimpeded grazing: *5th Report*, pp.29-39.
- ⁹⁰ *5th Report*, pp.29, 33-4. This was mirrored by Gilpin who claimed: 'And yet in some circumstances, these little tenements (incroachments as they are, and often the nurseries of idleness) give pleasure to a benevolent breast. Where we see them, as we sometimes do, the habitations of innocence and industry, and the means of providing for a large family with ease, and comfort, we are pleased at the idea of so much utility and happiness, arising from a petty trespass on a waste, which cannot in itself be considered an injury': Gilpin, p.123.
- ⁹¹ H.C.R.O., 2M30/669, Mr. Mansfield's remarks on the heads of the New Forest Bill (n.d., but 1791-2).
- ⁹² H.C.R.O., 2M30/669, Draft petition to the House of Lords from Rev. Sir C. Mill and other owners of lands and tenements adjoining to the New Forest, no date (but 1792); *Hampshire Chronicle*, 23 January 1792.

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- ⁹³ The best account remains R. Wells, *Wretched Faces: Famine in Wartime England, 1792-1802* (Stroud, 1988).
- ⁹⁴ T.N.A., HO 42/51, fos 20 and 40-1, John Latham, Mayor of Romsey to Portland, 2 and 4 Sept. 1800.
- ⁹⁵ R. Morriss, *The Royal Dockyards During the Revolutionary and Napoleonic Wars* (London, 1983).
- ⁹⁶ A.J. Holland, *Buckler's Hard: a Rural Shipbuilding Centre* (Emsworth, 1985).
- ⁹⁷ R. U. Sayce, 'The one-night house, and its distribution', *Folklore*, 53, 3 (1942) p.163; Gilpin, p.116.
- ⁹⁸ H.C.R.O., 84M70/PO1, Boldre Poor House Committee Minute, 4 July 1797.
- ⁹⁹ H.E. Widnell, *The Beaulieu Record* (Beaulieu, 1973), pp.167-8; 'Sowley Iron Works', *Beaulieu History Society Newsletter*, 2, June 2007.
- ¹⁰⁰ H.C.R.O., 1A09/A1, Boldre parish ledger, July 1801.
- ¹⁰¹ 'An Act for the Better Preservation of the Timber in the New Forest', 39 and 40, Geo. III c.86. The 1801 'New Forest Act' (41 Geo. III c.108) consolidated and extended the powers of the 1800 Act in relation to the creation of new Crown sylvicultural enclosures. See: Griffin, p.458.
- ¹⁰² T.N.A., F 17/435, Maps of the Forest showing boundaries of Crown lands as settled by the Commissioners appointed by Act 39 and 40 Geo. III, c.86, and of private lands as at 1812.
- ¹⁰³ T.N.A., LRRO 5/25, Abstract of proceedings of commissioners appointed under the New Forest Acts, 39 & 40 Geo III, [c 86], and 41 Geo III, [c 108].
- ¹⁰⁴ Griffin, p.459.
- ¹⁰⁵ H.C.R.O., 2M30/670, Memorial to the Treasury from William Mitford and Hans Sloane, verderers, Attachment Court, Lyndhurst, 6 August 1807.
- ¹⁰⁶ H.C.R.O., 2M30/670, Legal judgement of Thomas Plumer, Lincoln's Inn, 5 September 1807.
- ¹⁰⁷ H.C.R.O., 2M30/670, statement of understeward Charles Harbin, Ringwood, n.d. (but August 1807), legal opinion of solicitor general Sir Thomas Plumer, 30 September 1807, and opinion of John Lens, Lincolns Inn, 5 October 1807.
- ¹⁰⁸ H.C.R.O., 2M30/670, Memorial of William Mitford, Peter Sille, George Rose and Hans Sloane, verderers, Lyndhurst, 6 November 1807, and opinion of Sir Thomas Plumer, V Gibbs

and John Lens, 8 December 1807; T.N.A., TS 25/2/46, fos 309-310, opinion of law officers in the further case respecting encroachments in the New Forest and requesting power to bring actions of trespass against the offenders, 8 December 1807.

¹⁰⁹ Short has shown this was also true of Ashdown Forest in neighbouring Sussex: Short, p. 136.

¹¹⁰ See note 99.

¹¹¹ *5th Report*, pp. 23, 27.

¹¹² Tubbs, pp.32-5.

¹¹³ *Abstract of Claims*, 1670; Tubbs, *passim*.

¹¹⁴ Gilpin, p.123.

¹¹⁵ For a parallel instance in Lancashire see: G. Rogers, 'Custom and common right: waste land enclosure and social change in west Lancashire', *Agricultural History Review*, 41, 2, (1993), p.142.

¹¹⁶ Ward, p.148.

¹¹⁷ My thanks to Richard Hoyle for this point. D. Defoe, *A Tour Through the Whole Island of Great Britain* (London, 1962/1724-6), pp. 200-206.

¹¹⁸ See notes 51 and 80; Gilpin, p.117.

¹¹⁹ For instance see the register of properties made in: T.N.A., LRRO 5/25, Abstract of proceedings of commissioners appointed under the New Forest Acts [1801], 39 & 40 Geo III, c 86, and 41 Geo III, c 108.

¹²⁰ P. Linebaugh, 'Enclosures from the bottom up', *Radical History Review*, 108 (2010), 11-27.

¹²¹ K. Jacoby, *Crimes Against Nature: Squatters, Poachers, Thieves and the Hidden History of American Conservation* (Berkeley, CA, 2003).